

pay of personnel subject to sections 210, 213 (except subsections (d) and (e)), and 214 of this title [see Short Title note under section 5332 of this title], and any minimum or maximum rate, limitation, or allowance applicable to any such personnel, shall be adjusted, by amounts which are equal, insofar as practicable and with such exceptions as may be necessary to provide for appropriate relationships between positions, to the amounts of the adjustments made by the President under subparagraphs (1) and (2) of this section, by the following authorities—

“(i) the President pro tempore of the Senate, with respect to the United States Senate;

“(ii) the Speaker of the House of Representatives with respect to the United States House of Representatives;

“(iii) the Architect of the Capitol, with respect to the Office of the Architect of the Capitol;

“(iv) the Director of the Administrative Office of the United States Courts, with respect to the judicial branch of the Government; and

“(v) the Secretary of Agriculture, with respect to persons employed by the county committees established pursuant to section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)). Such adjustments shall be made in such manner as the appropriate authority concerned deems advisable and shall have the force and effect of statute. Nothing in this section shall impair any authority pursuant to which rates of pay may be fixed by administrative action.” [Section 212 of Pub. L. 90-206 effective Dec. 16, 1967, see section 220(a)(1) of Pub. L. 90-206, set out as a note under section 3110 of this title.]

§ 5304. Locality-based comparability payments

(a) Pay disparities shall be identified and reduced as follows:

(1) Comparability payments shall be payable within each locality determined to have a pay disparity greater than 5 percent.

(2)(A) The localities having pay disparities, and the size of those disparities, shall, for purposes of any comparability payment scheduled to take effect in any calendar year, be determined in accordance with the appropriate report, as prepared and submitted to the President under subsection (d)(1) for purposes of such calendar year.

(B) Any computation necessary to determine the size of the comparability payment to become payable for any locality in a year (as well as any determination as to the size of any pay disparity remaining after that comparability payment is made) shall likewise be made using data contained in the appropriate report (described in subparagraph (A)) so prepared and submitted for purposes of such calendar year.

(3) Subject to paragraph (4), the amount of the comparability payments payable under this subsection in a calendar year within any locality in which a comparability payment is payable shall be computed using such percentage as the President determines for such locality under subsection (d)(2), except that—

(A) the percentage for the first calendar year in which any amounts are payable under this section may not be less than $\frac{1}{2}$ of the amount needed to reduce the pay disparity of the locality involved to 5 percent;

(B) the percentage for the second calendar year in which any amounts are payable under this section may not be less than $\frac{3}{10}$ of the amount needed to reduce the pay disparity of the locality involved to 5 percent;

(C) the percentage for the third calendar year in which any amounts are payable under this section may not be less than $\frac{2}{5}$ of the amount needed to reduce the pay disparity of the locality involved to 5 percent;

(D) the percentage for the fourth calendar year in which any amounts are payable under this section may not be less than $\frac{1}{2}$ of the amount needed to reduce the pay disparity of the locality involved to 5 percent;

(E) the percentage for the fifth calendar year in which any amounts are payable under this section may not be less than $\frac{3}{5}$ of the amount needed to reduce the pay disparity of the locality involved to 5 percent;

(F) the percentage for the sixth calendar year in which any amounts are payable under this section may not be less than $\frac{7}{10}$ of the amount needed to reduce the pay disparity of the locality involved to 5 percent;

(G) the percentage for the seventh calendar year in which any amounts are payable under this section may not be less than $\frac{8}{10}$ of the amount needed to reduce the pay disparity of the locality involved to 5 percent;

(H) the percentage for the eighth calendar year in which any amounts are payable under this section may not be less than $\frac{9}{10}$ of the amount needed to reduce the pay disparity of the locality involved to 5 percent; and

(I) the percentage for the ninth calendar year in which any amounts are payable under this section, and any year thereafter, may not be less than the full amount necessary to reduce the pay disparity of the locality involved to 5 percent.

(4) Nothing in this section shall be considered to preclude the President, in his discretion, from adjusting comparability payments to a level higher than the minimum level otherwise required in a calendar year, including to the level necessary to eliminate a locality's pay disparity completely.

(b) After the ninth calendar year (referred to in subsection (a)(3)(I)), the level of comparability payments payable within such locality may be reduced for any subsequent calendar year, but only if, or to the extent that, the reduction would not immediately create another pay disparity in excess of 5 percent within the locality (taking into consideration any comparability payments remaining payable).

(c)(1) The amount of the comparability payment payable within any particular locality during a calendar year—

(A) shall be stated as a single percentage, which shall be uniformly applicable to General Schedule positions within the locality; and

(B) shall, for any employee entitled to receive a comparability payment, be computed by applying that percentage to such employee's scheduled rate of basic pay (or, if lower due to a limitation on the rate payable, the rate actually payable), subject to subsection (g).

(2) A comparability payment—

(A) shall be considered to be part of basic pay for purposes of retirement under chapter 83 or 84, as applicable, life insurance under

chapter 87, and premium pay under subchapter V of chapter 55, and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe; and

(B) shall be paid in the same manner and at the same time as the basic pay payable to such employee pursuant to any provision of law outside of this section.

(3) Nothing in this subchapter shall be considered to permit or require that any portion of a comparability payment be taken into account for purposes of any adjustment under section 5303.

(4)(A) Only employees receiving scheduled rates of basic pay (subject to any pay limitation which may apply) shall be eligible for comparability payments under this section.

(B) Comparability payments shall not be payable for service performed in any position which may not, under subsection (f)(1)(A), be included within a pay locality.

(d) In order to carry out this section, the President shall—

(1) direct such agent as he considers appropriate to prepare and submit to him annually, after considering such views and recommendations as may be submitted under subsection (e) (but not later than 13 months before the start of the calendar year for purposes of which it is prepared), a report that—

(A) compares the rates of pay under the General Schedule (disregarding any described in section 5302(8)(C))¹ with the rates of pay generally paid to non-Federal workers for the same levels of work within each pay locality, as determined on the basis of appropriate surveys that shall be conducted by the Bureau of Labor Statistics;

(B) based on data from such surveys, identifies each locality in which a pay disparity exists and specifies the size of each such pay disparity (before and after taking into consideration any comparability payments payable);

(C) makes recommendations for appropriate comparability payments, in conformance with applicable requirements of this section; and

(D) includes the views and recommendations submitted under subsection (e);

(2) after considering the report of his agent (including the views and recommendations referred to in subsection (e)(2)(C), provide for or adjust comparability payments in conformance with applicable requirements of this section, effective as of the beginning of the first applicable pay period commencing on or after January 1 of the applicable year; and

(3) transmit to Congress a report of the actions taken under paragraph (2) (together with a copy of the report submitted to him by his agent, including the views and recommendations referred to in subsection (e)(2)(C)) which shall—

(A) identify each pay locality;

(B) specify which localities have pay disparities in excess of 5 percent, and the size of

the disparity existing in each of those localities, according to the pay agent's most recent report under paragraph (1) (before and after taking into consideration any comparability payments payable); and

(C) indicate the size of the respective comparability payments (expressed as percentages) which will be in effect under paragraph (2) for the various pay localities specified under subparagraph (B) for the applicable calendar year.

(e)(1) The President shall establish a Federal Salary Council of 9 members, of whom—

(A) 3 shall be chosen from among persons generally recognized for their impartiality, knowledge, and experience in the field of labor relations and pay policy; and

(B) 6 shall be representatives of employee organizations which represent substantial numbers of employees holding General Schedule positions, and who shall be selected giving due consideration to such factors as the relative numbers of employees represented by the various organizations, except that not more than 3 members of the Council at any one time shall be from a single employee organization, council, federation, alliance, association, or affiliation of employee organizations.

Members of the Council shall not receive pay by reason of their service on the Council, nor shall members who are not otherwise employees of the United States be considered employees by reason of any such service. However, members under subparagraph (A) may be paid expenses in accordance with section 5703. The President shall designate one of the members to serve as Chairman of the Federal Salary Council. One of the 3 members under subparagraph (A) may be the Chairman of the Federal Prevailing Rate Advisory Committee, notwithstanding the restriction under section 5347(a)(1), and such individual may also be designated to serve as Chairman of the Federal Salary Council.

(2) The pay agent shall—

(A) provide for meetings with the Council and give thorough consideration to the views and recommendations of the Council and the individual views and recommendations, if any, of the members of the Council regarding—

(i) the establishment or modification of pay localities;

(ii) the coverage of the surveys of pay localities conducted by the Bureau of Labor Statistics under subsection (d)(1)(A) (including, but not limited to, the occupations, establishment sizes, and industries to be surveyed, and how pay localities are to be surveyed);

(iii) the process of comparing the rates of pay payable under the General Schedule with rates of pay for the same levels of work performed by non-Federal workers; and

(iv) the level of comparability payments that should be paid in order to eliminate or reduce pay disparities in accordance with the requirements of this section;

(B) give thorough consideration to the views and recommendations of employee organizations not represented on the Council regarding the subjects in subparagraph (A)(i)-(iv); and

¹ See References in Text note below.

(C) include in its report to the President the views and recommendations submitted as provided in this subsection by the Council, by any member of the Council, and by employee organizations not represented on the Council.

(f)(1) The pay agent may provide for such pay localities as the pay agent considers appropriate, except that—

(A) each General Schedule position (excluding any outside the continental United States, as defined in section 5701(6)) shall be included with a pay locality; and

(B) the boundaries of pay localities shall be determined based on appropriate factors which may include local labor market patterns, commuting patterns, and practices of other employers.

(2)(A) The establishment or modification of any such boundaries shall be effected by regulations which, notwithstanding subsection (a)(2) of section 553, shall be promulgated in accordance with the notice and comment requirements of such section.

(B) Judicial review of any regulation under this subsection shall be limited to whether or not it was promulgated in accordance with the requirements referred to in subparagraph (A).

(g)(1) Except as provided in paragraph (2), comparability payments may not be paid at a rate which, when added to the rate of basic pay otherwise payable to the employee involved, would cause the total to exceed the rate of basic pay payable for level IV of the Executive Schedule.

(2) The applicable maximum under this subsection shall be level III of the Executive Schedule for—

(A) positions under subparagraphs (A)–(C) of subsection (h)(1); and

(B) any positions under subsection (h)(1)(D) which the President may determine.

(h)(1) For the purpose of this subsection, the term “position” means—

(A) a position to which section 5376 applies (relating to certain senior-level positions);

(B) a position to which section 5372 applies (relating to administrative law judges appointed under section 3105);

(C) a position to which section 5372a applies (relating to contract appeals board members); and

(D) a position within an Executive agency not covered under the General Schedule or any of the preceding subparagraphs, the rate of basic pay for which is (or, but for this section, would be) no more than the rate payable for level IV of the Executive Schedule;

but does not include—

(i) a position to which subchapter IV applies (relating to prevailing rate systems);

(ii) a position as to which a rate of pay is authorized under section 5377 (relating to critical positions);

(iii) a position to which subchapter II applies (relating to the Executive Schedule);

(iv) a Senior Executive Service position under section 3132;

(v) a position in the Federal Bureau of Investigation and Drug Enforcement Administra-

tion Senior Executive Service under section 3151; or

(vi) a position in a system equivalent to the system in clause (iv), as determined by the President's Pay Agent designated under subsection (d).

(2)(A) Notwithstanding subsection (c)(4) or any other provision of this section, but subject to subparagraph (B) and paragraph (3), upon the request of the head of an Executive agency with respect to 1 or more categories of positions, the President may provide that each employee of such agency who holds a position within such category, and within the particular locality involved, shall be entitled to receive comparability payments.

(B) A request by an agency head or exercise of authority by the President under subparagraph (A) shall cover—

(i) with respect to the positions under subparagraphs (A) through (C) of paragraph (1), all positions described in the subparagraph or subparagraphs involved (excluding any under clause (i), (ii), (iii), (iv), (v), or (vi) of such paragraph); and

(ii) with respect to positions under paragraph (1)(D), such positions as may be considered appropriate (excluding any under clause (i), (ii), (iii), (iv), (v), or (vi) of paragraph (1)).

(C) Notwithstanding subsection (c)(4) or any other provision of law, but subject to paragraph (3), in the case of a category with positions that are in more than 1 Executive agency, the President may, on his own initiative, provide that each employee who holds a position within such category, and in the locality involved, shall be entitled to receive comparability payments. No later than 30 days before an employee receives comparability payments under this subparagraph, the President or the President's designee shall submit a detailed report to the Congress justifying the reasons for the extension, including consideration of recruitment and retention rates and the expense of extending locality pay.

(3) Comparability payments under this subsection—

(A) may be paid only in any calendar year in which comparability payments under the preceding provisions of this section are payable with respect to General Schedule positions within the same locality;

(B) shall take effect, within the locality involved, on the first day of the first applicable pay period commencing on or after such date as the President designates (except that no date may be designated which would require any retroactive payments), and shall remain in effect through the last day of the last applicable pay period commencing during that calendar year;

(C) shall be computed using the same percentage as is applicable, for the calendar year involved, with respect to General Schedule positions within the same locality; and

(D) shall be subject to the applicable limitation under subsection (g).

(i) The Office of Personnel Management may prescribe regulations, consistent with the provisions of this section, governing the payment of comparability payments to employees.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 459; Pub. L. 91-375, §6(c)(11), Aug. 12, 1970, 84 Stat. 776; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-465, title II, §2314(c)(3), Oct. 17, 1980, 94 Stat. 2168; Pub. L. 101-509, title V, §529 [title I, §101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1431; Pub. L. 102-378, §2(26), Oct. 2, 1992, 106 Stat. 1348; Pub. L. 108-136, div. A, title XI, §1125(a)(1), Nov. 24, 2003, 117 Stat. 1638; Pub. L. 108-411, title III, §302(a)(1), Oct. 30, 2004, 118 Stat. 2318.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|--|
| | 5 U.S.C. 1174. | Oct. 11, 1962, Pub. L. 87-793, §505, 76 Stat. 842. |

The words “agencies” and “regulations” are substituted for “departments” and “rules”, respectively.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The General Schedule, referred to in text, is set out under section 5332 of this title.

Section 5302(8)(C), referred to in subsec. (d)(1)(A), was redesignated 5302(8)(B) of this title by Pub. L. 103-89, §3(b)(1)(E)(i)(II), Sept. 30, 1993, 107 Stat. 981.

Levels III and IV of the Executive Schedule, referred to in subsecs. (g) and (h)(1)(D), are set out in sections 5314 and 5315, respectively, of this title.

AMENDMENTS

2004—Subsec. (g)(2)(A). Pub. L. 108-411, §302(a)(1)(A), substituted “(A)–(C)” for “(A)–(D)”.

Subsec. (h)(2)(B)(i). Pub. L. 108-411, §302(a)(1)(B), substituted “or (vi)” for “or (vii)”.

2003—Subsec. (g)(2)(A). Pub. L. 108-136, §1125(a)(1)(A)(i), substituted “subparagraphs (A)–(D)” for “subparagraphs (A)–(E)”.

Subsec. (g)(2)(B). Pub. L. 108-136, §1125(a)(1)(A)(ii), substituted “subsection (h)(1)(D)” for “subsection (h)(1)(F)”.

Subsec. (h)(1)(B) to (F). Pub. L. 108-136, §1125(a)(1)(B)(i), (ii), redesignated subpars. (D), (E), and (F) as (B), (C), and (D), respectively, and struck out former subpars. (B) and (C) which read as follows:

“(B) a Senior Executive Service position under section 3132;

“(C) a position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service under section 3151;”.

Subsec. (h)(1)(iv) to (vi). Pub. L. 108-136, §1125(a)(1)(B)(iii)–(v), added cls. (iv) to (vi).

Subsec. (h)(2)(B)(i). Pub. L. 108-136, §1125(a)(1)(C)(i), substituted “subparagraphs (A) through (C)” for “subparagraphs (A) through (E)” and “clause (i), (ii), (iii), (iv), (v), or (vii)” for “clause (i) or (ii)”.

Subsec. (h)(2)(B)(ii). Pub. L. 108-136, §1125(a)(1)(C)(ii), substituted “paragraph (1)(D)” for “paragraph (1)(F)” and “clause (i), (ii), (iii), (iv), (v), or (vi)” for “clause (i) or (ii)”.

1992—Subsec. (a)(3). Pub. L. 102-378, §2(26)(A)(i), substituted “Subject to paragraph (4),” for “Subject to paragraphs (4) and (5),” and “a comparability payment” for “a comparative payment”.

Subsec. (a)(3)(H). Pub. L. 102-378, §2(26)(A)(ii), inserted “and” after semicolon at end.

Subsec. (a)(3)(I). Pub. L. 102-378, §2(26)(A)(iii), substituted a period for semicolon at end.

Subsec. (d)(1)(A). Pub. L. 102-378, §2(26)(B), inserted “(disregarding any described in section 5302(8)(C))” after “General Schedule” and struck out “annual” before “surveys”.

Subsec. (e)(1). Pub. L. 102-378, §2(26)(C)(i), inserted after second sentence “However, members under sub-

paragraph (A) may be paid expenses in accordance with section 5703.”

Subsec. (e)(2)(A)(ii). Pub. L. 102-378, §2(26)(C)(ii), substituted “surveys of pay localities” for “annual survey” and “industries” for “industries.”.

Subsec. (g)(2). Pub. L. 102-378, §2(26)(D), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “For positions under subparagraphs (A)–(E) of subsection (h)(1), the applicable maximum under this subsection shall be level III of the Executive Schedule.”

Subsec. (h)(1)(F). Pub. L. 102-378, §2(26)(E)(i)(I), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “a position within an Executive agency not covered under any of the preceding subparagraphs, the rate of basic pay for which is (or, but for this section, would be) less than the rate payable for level V of the Executive Schedule;”.

Subsec. (h)(1)(iii). Pub. L. 102-378, §2(26)(E)(i)(II)–(IV), added cl. (iii).

Subsec. (h)(2)(C). Pub. L. 102-378, §2(26)(E)(ii), added subpar. (C).

Subsec. (h)(3)(B). Pub. L. 102-378, §2(26)(E)(iii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “shall be payable, within the locality involved, for the entirety of each calendar year for which authority is granted by the President;”.

1990—Pub. L. 101-509 amended section generally, substituting provisions relating to locality-based comparability payments for provisions making functions, duties, and regulations of agencies and Office of Personnel Management with respect to this subchapter subject to Presidential policies and regulations.

1980—Pub. L. 96-465 substituted “the Foreign Service Act of 1980” for “chapter 14 of title 22” in provisions preceding par. (1).

1978—Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission”.

1970—Pub. L. 91-375 struck out provisions making functions, duties and regulations of the agencies and the Civil Service Commission with respect to the provisions of part III of title 39 relating to employees in the postal field service subject to Presidential policies and regulations.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-411, title III, §302(a)(2), Oct. 30, 2004, 118 Stat. 2318, provided that: “The amendments made by this subsection [amending this section] shall take effect as if included in the enactment of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136).”

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-136, div. A, title XI, §1125(c), Nov. 24, 2003, 117 Stat. 1640, provided that:

“(1) The amendments made by this section [enacting section 7302 of this title and amending this section, sections 5382 and 5383 of this title, and section 207 of Title 18, Crimes and Criminal Procedure] shall take effect on the first day of the first pay period beginning on or after the first January 1 following the date of the enactment of this section [Nov. 24, 2003].

“(2) The amendments made by subsection (a) [amending this section and sections 5382 and 5383 of this title] may not result in a reduction in the rate of basic pay for any senior executive during the first year after the effective date of those amendments.

“(3) For the purposes of paragraph (2), the rate of basic pay for a senior executive shall be deemed to be the rate of basic pay set for the senior executive under section 5383 of title 5, United States Code, plus applicable locality pay paid to that senior executive, as of the date of the enactment of this Act [Nov. 24, 2003].

“(4) Until otherwise provided by law, or except as otherwise provided by this section, any reference in a provision of law to a rate of basic pay that is above the minimum payable and below the maximum payable to a member of the Senior Executive Service shall be con-

sidered a reference to the rate of basic pay payable for level IV of the Executive Schedule.”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, with provision that first calendar year in which comparability payments under this section are paid shall be calendar year beginning Jan. 1, 1994, see section 529 [title III, §305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

DELEGATION OF FUNCTIONS

For designation of agents of President under subsecs. (d)(1) and (h) of this section, see Ex. Ord. No. 12748, §2(a), Feb. 1, 1991, 56 F.R. 4521, eff. Feb. 3, 1991, set out as a note under section 5301 of this title.

COMPARABILITY PAYMENTS BETWEEN 2002 AND 2007; COMPARISONS AND RECOMMENDATIONS; REVISION OF METHODOLOGY

Pub. L. 106-554, §1(a)(3) [title VI, §637], Dec. 21, 2000, 114 Stat. 2763, 2763A-165, provided that:

“(a) For purposes of this section—

“(1) the term ‘comparability payment’ refers to a locality-based comparability payment under section 5304 of title 5, United States Code;

“(2) the term ‘President’s pay agent’ refers to the pay agent described in section 5302(4) of such title; and

“(3) the term ‘pay locality’ has the meaning given such term by section 5302(5) of such title.

“(b) Notwithstanding any provision of section 5304 of title 5, United States Code, for purposes of determining appropriate pay localities and making comparability payment recommendations, the President’s pay agent may, in accordance with succeeding provisions of this section, make comparisons of General Schedule pay and non-Federal pay within any of the metropolitan statistical areas described in subsection (d)(3), using—

“(1) data from surveys of the Bureau of Labor Statistics;

“(2) salary data sets obtained under subsection (c); or

“(3) any combination thereof.

“(c) To the extent necessary in order to carry out this section, the President’s pay agent may obtain any salary data sets (referred to in subsection (b)) from any organization or entity that regularly compiles similar data for businesses in the private sector.

“(d)(1)(A) This paragraph applies with respect to the five metropolitan statistical areas described in paragraph (3) which—

“(i) have the highest levels of nonfarm employment (as determined based on data made available by the Bureau of Labor Statistics); and

“(ii) as of the date of the enactment of this Act [Dec. 21, 2000], have not previously been surveyed by

the Bureau of Labor Statistics (as discrete pay localities) for purposes of section 5304 of title 5, United States Code.

“(B) The President’s pay agent, based on such comparisons under subsection (b) as the pay agent considers appropriate, shall: (i) determine whether any of the five areas under subparagraph (A) warrants designation as a discrete pay locality; and (ii) if so, make recommendations as to what level of comparability payments would be appropriate during 2002 for each area so determined.

“(C)(i) Any recommendations under subparagraph (B)(ii) shall be included—

“(I) in the pay agent’s report under section 5304(d)(1) of title 5, United States Code, submitted for purposes of comparability payments scheduled to become payable in 2002; or

“(II) if compliance with subclause (I) is impracticable, in a supplementary report which the pay agent shall submit to the President and the Congress no later than March 1, 2001.

“(i) In the event that the recommendations are completed in time to be included in the report described in clause (i)(I), a copy of those recommendations shall be transmitted by the pay agent to the Congress contemporaneous with their submission to the President.

“(D) Each of the five areas under subparagraph (A) that so warrants, as determined by the President’s pay agent, shall be designated as a discrete pay locality under section 5304 of title 5, United States Code, in time for it to be treated as such for purposes of comparability payments becoming payable in 2002.

“(2) The President’s pay agent may, at any time after the 180th day following the submission of the report under subsection (f), make any initial or further determinations or recommendations under this section, based on any pay comparisons under subsection (b), with respect to any area described in paragraph (3).

“(3) An area described in this paragraph is any metropolitan statistical area within the continental United States that (as determined based on data made available by the Bureau of Labor Statistics and the Office of Personnel Management, respectively) has a high level of nonfarm employment and at least 2,500 General Schedule employees whose post of duty is within such area.

“(e)(1) The authority under this section to make pay comparisons and to make any determinations or recommendations based on such comparisons shall be available to the President’s pay agent only for purposes of comparability payments becoming payable on or after January 1, 2002, and before January 1, 2007, and only with respect to areas described in subsection (d)(3).

“(2) Any comparisons and recommendations so made shall, if included in the pay agent’s report under section 5304(d)(1) of title 5, United States Code, for any year (or the pay agent’s supplementary report, in accordance with subsection (d)(1)(C)(i)(II)), be considered and acted on as the pay agent’s comparisons and recommendations under such section 5304(d)(1) for the area and the year involved.

“(f)(1) No later than March 1, 2001, the President’s pay agent shall submit to the Committee on Government Reform [now Committee on Oversight and Government Reform] of the House of Representatives, the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate, and the Committees on Appropriations of the House of Representatives and of the Senate, a report on the use of pay comparison data, as described in subsection (b)(2) or (3) (as appropriate), for purposes of comparability payments.

“(2) The report shall include the cost of obtaining such data, the rationale underlying the decisions reached based on such data, and the relative advantages and disadvantages of using such data (including whether the effort involved in analyzing and integrating such data is commensurate with the benefits derived from their use). The report may include specific

recommendations regarding the continued use of such data.

“(g)(1) No later than May 1, 2001, the President’s pay agent shall prepare and submit to the committees specified in subsection (f)(1) a report relating to the ongoing efforts of the Office of Personnel Management, the Office of Management and Budget, and the Bureau of Labor Statistics to revise the methodology currently being used by the Bureau of Labor Statistics in performing its surveys under section 5304 of title 5, United States Code.

“(2) The report shall include a detailed accounting of any concerns the pay agent may have regarding the current methodology, the specific projects the pay agent has directed any of those agencies to undertake in order to address those concerns, and a time line for the anticipated completion of those projects and for implementation of the revised methodology.

“(3) The report shall also include recommendations as to how those ongoing efforts might be expedited, including any additional resources which, in the opinion of the pay agent, are needed in order to expedite completion of the activities described in the preceding provisions of this subsection, and the reasons why those additional resources are needed.”

FREEZE OF CURRENT RATE FOR LOCALITY-BASED COMPARABILITY ADJUSTMENTS

Pub. L. 106-554, §1(a)(4) [div. B, title IX, §902(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-304, which provided that notwithstanding any other law, no officer or member of the United States Secret Service Uniformed Division or Park Police was to be paid locality pay under section 5304 or 5304a of this title, at a percentage rate for the applicable locality in excess of the rate in effect for pay periods during calendar year 2000, ceased to be effective on the first day of the first pay period on or after Jan. 1, 2003, pursuant to Pub. L. 108-7, div. J, title VI, §643, Feb. 20, 2003, 117 Stat. 473.

COMPARABILITY PAYMENTS IN 1994 AND 1995

Pub. L. 103-329, title VI, §630(b), (c), Sept. 30, 1994, 108 Stat. 2424, provided that:

“(b) For purposes of any locality-based comparability payments taking effect in fiscal year 1995 under subchapter I of chapter 53 of title 5, United States Code (whether by adjustment or otherwise), section 5304(a) of such title shall be deemed to be without force or effect.

“(c) Notwithstanding section 5304(a)(3)(B) of title 5, United States Code, the annualized cost of pay adjustments made under section 5304 of such title in calendar year 1995 shall be equal to 0.6 percent of the estimated aggregate fiscal year 1995 executive branch civilian payroll—

“(1) as determined by the pay agent (within the meaning of section 5302 of such title); and

“(2) determined as if the rates of pay and comparability payments payable on September 30, 1994, had remained in effect.”

Section 8(b) of Pub. L. 102-378 provided that: “Notwithstanding section 5304 of title 5, United States Code, for purposes of any comparability payments scheduled to take effect under such section during calendar years 1994 and 1995, respectively—

“(1) the report required by subsection (d)(1) of such section may be submitted not later than 1 month before the start of the calendar year for purposes of which it is prepared; and

“(2) the surveys conducted by the Bureau of Labor Statistics for use in preparing any such report may be other than annual surveys, and shall, to the greatest extent practicable, be completed not later than 4 months before the start of the calendar year for purposes of which the surveys are conducted.”

INTERIM GEOGRAPHIC ADJUSTMENTS

Section 529 [title III, §302] of Pub. L. 101-509, as amended by Pub. L. 102-378, §3(4), Oct. 2, 1992, 106 Stat. 1356; Pub. L. 103-89, §3(b)(2), Sept. 30, 1993, 107 Stat. 982, provided that:

“(a) DEFINITIONS.—For the purpose of this section—

“(1) the term ‘area’ means any consolidated metropolitan statistical area, primary metropolitan statistical area, or metropolitan statistical area, with at least 5,000 General Schedule employees; and

“(2) the term ‘pay relative’ shall have the meaning given such term under regulations prescribed by the Bureau of Labor Statistics.

“(b) AUTHORITY.—(1) The President may establish geographic adjustments of up to 8 percent of basic pay which may be paid to each General Schedule employee whose duty station is within any area where such adjustment is needed (as determined under paragraph (2)).

“(2) In determining areas where an interim geographic adjustment is needed, the President shall consider available evidence of significant pay disparities, including BLS information on pay relatives and relevant commercial surveys, and recruitment or retention problems.

“(c) ADMINISTRATION.—(1) An adjustment under this section shall be administered, to the extent practicable, in the same manner as locality-based comparability payments under subchapter I of chapter 53 of title 5, United States Code (as amended by this Act), including in terms of—

“(A) the basic pay to which a percentage is applied in computing an amount payable under this section;

“(B) the purposes for which any amount under this section is to be considered part of basic pay;

“(C) the time and manner in which amounts under this section are to be paid (including any maximum rate limitation); and

“(D) the authority of the President, upon request of an agency head, to extend this section to employees who would not otherwise be covered.

“(2) No amount payable under this section shall be taken into account in any survey or computation under, or for any other purpose in the administration of, section 5304 of title 5, United States Code (as so amended).

“(d) COMMENCEMENT AND TERMINATION RULES.—(1) The effective date of an adjustment under this section shall be as determined by the President, but not later than January 1, 1994.

“(2)(A) The size of any payments under this section may be reduced or terminated after the amendments made by section 101 of this Act [section 529 [title I, §101] of Pub. L. 101-509, see Tables for classification] take effect [see Effective Date of 1990 Amendment note set out under section 5301 of this title], except that the reduction or termination of a payment under this section may not have the effect of reducing, for the individual involved, the total rate at which additional forms of basic pay (as defined in subparagraph (B)) are payable to such individual.

“(B) The total rate to which subparagraph (A) applies is the sum of—

“(i) the rate at which comparability payments (under section 5304 of title 5, United States Code, as amended by such Act), are payable; and

“(ii) the rate at which payments under this section are payable.

“(e) EMPLOYEES RECEIVING SPECIAL PAY RATES.—The President (or his designated agent) shall determine what, if any, geographic adjustment shall be payable under this section in the case of an employee whose rate of pay is fixed under section 5303 of title 5, United States Code (as in effect before the date of enactment of this Act [Nov. 5, 1990]), section 5305 of title 5, United States Code (as amended by section 101 of this Act), or any similar provision of law.

“(f) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act [Nov. 5, 1990].”

[Amendment by Pub. L. 103-89 to section 529 [title III, §302] of Pub. L. 101-509, set out above, effective Nov. 1, 1993, see section 3(c) of Pub. L. 103-89, set out as an Effective Date of 1993 Amendment note under section 3372 of this title.]

[Amendment by Pub. L. 102-378 to section 529 [title III, §302] of Pub. L. 101-509, set out above, effective Nov.

5, 1990, see section 9(b)(6) of Pub. L. 102-378, set out as an Effective Date of 1992 Amendment note under section 6303 of this title.]

Interim geographic adjustments pursuant to section 529 [title III, §302] of Pub. L. 101-509, set out above, were provided by the following executive orders, formerly set out as notes under section 5332 of this title, effective on the first day of first pay period beginning on or after the effective date shown:

Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, effective Jan. 1, 1995.

Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909, effective Jan. 1, 1993.

Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453, effective Jan. 1, 1992.

Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385, effective Jan. 1, 1991.

EXECUTIVE ORDER NO. 11073

Ex. Ord. No. 11073, Jan. 7, 1963, 28 F.R. 203, as amended by Ex. Ord. No. 11173, Aug. 20, 1964, 29 F.R. 11999, which provided for Federal salary administration, was superseded by Ex. Ord. No. 11721, May 23, 1973, 38 F.R. 13717, formerly set out below.

EXECUTIVE ORDER NO. 11721

Ex. Ord. No. 11721, May 23, 1973, 38 F.R. 13717, as amended by Ex. Ord. No. 12004, July 20, 1977, 42 F.R. 37527; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, which provided for administration of the Federal pay system, was revoked by Ex. Ord. No. 12748, Feb. 1, 1991, 56 F.R. 4521, eff. Feb. 3, 1991, set out under section 5301 of this title.

EX. ORD. NO. 12764. FEDERAL SALARY COUNCIL

Ex. Ord. No. 12764, June 5, 1991, 56 F.R. 26587, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5304(e) of title 5, United States Code, as amended, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), an advisory committee on locality-based comparability payments for General Schedule employees, it is hereby ordered as follows:

SECTION 1. Establishment. There is established a Federal Salary Council (the "Council"). The Council shall be composed of nine members appointed by the President in accordance with section 5304(e)(1) of title 5, United States Code. The President shall designate one of the members to serve as Chairman of the Council and shall designate another member to serve as Vice Chairman of the Council. The Vice Chairman shall act as Chairman in the absence of the Chairman.

SEC. 2. Function. The Council shall meet with the President's Pay Agent, as designated under section 2(a) of Executive Order No. 12748 of February 1, 1991 [5 U.S.C. 5301 note], to provide views and recommendations regarding:

(a) the establishment or modification of pay localities;

(b) the coverage of annual surveys conducted by the Bureau of Labor Statistics under subsection 5304(d)(1)(A) of title 5, United States Code (including, but not limited to, the occupations, establishment sizes, and industries to be surveyed, and how pay localities are to be surveyed);

(c) the process of comparing the rates of pay payable under the General Schedule with rates of pay for the same levels of work performed by non-Federal workers; and

(d) the level of comparability payments that should be paid in order to eliminate or reduce pay disparities in accordance with the requirements of section 5304 of title 5, United States Code [sic].

SEC. 3. Administration. (a) Members of the Council shall receive no pay by reason of their service on the Council.

(b) To the extent permitted by law and subject to the availability of appropriations, the Office of Personnel

Management (the "Office") shall provide such facilities and administrative support to the Council as the Director of the Office determines appropriate.

(c) Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended [5 U.S.C. App.], except that of reporting to the Congress, which are applicable to the Council, shall be performed by the Director of the Office, in accordance with the guidelines and procedures established by the Administrator of General Services.

GEORGE BUSH.

LOCALITY-BASED COMPARABILITY PAYMENTS

For adjustment of locality-based comparability payments under this section, see the executive order detailing the adjustment of certain rates of pay set out as a note under section 5332 of this title.

Approvals of locality-based comparability payments recommended by the Director of the Office of Personnel Management were contained in the following:

Memorandum of President of the United States, Nov. 30, 1994, 59 F.R. 62549.

Memorandum of President of the United States, Dec. 1, 1993, 58 F.R. 64097.

§ 5304a. Authority to fix an alternative level of comparability payments

(a) If, because of national emergency or serious economic conditions affecting the general welfare, the President should consider the level of comparability payments which would otherwise be payable under section 5304 in any year to be inappropriate, the President shall—

(1) prepare and transmit to Congress, at least 1 month before those comparability payments (disregarding this section) would otherwise become payable, a report describing the alternative level of payments which the President instead intends to provide, including the reasons why such alternative level is considered necessary; and

(2) implement the alternative level of payments beginning on the same date as would otherwise apply, for the year involved, under section 5304.

(b) The requirements set forth in paragraphs (2) and (3), respectively, of section 5303(b) shall apply with respect to any decision to exercise any authority to fix an alternative level of comparability payments under this section.

(Added Pub. L. 101-509, title V, §529 [title I, §101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1436.)

EFFECTIVE DATE

Section effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

SPECIAL RULE RELATING TO COMPARABILITY PAYMENTS IN 1994

Section 634 of Pub. L. 101-509 provided that:

"Notwithstanding any other provision of law (including any provision of the Federal Employees Pay Comparability Act of 1990 [see Short Title of 1990 Amendment note set out under section 5301 of this title] and any provision of law amended by such Act), for purposes of any comparability payments scheduled to take effect under section 5304 of title 5, United States Code (as amended by such Act) during calendar year 1994—

"(1) deem section 5304a of such title (as so amended) to be amended as follows: